

REMARKS

The specification has been amended to acknowledge funding support from the United States government.

Upon entry of this amendment, claims 1-4 and 6-19 will be pending. Claim 5 has been canceled herein without prejudice. New claims 16-19 have been added. Support for newly added claims 16-18 is found throughout the specification as originally filed, in particular, at page 9, lines 22-28 and page 10, line 10-26. Support for newly added claim 19 is found at page 6, lines 22-23.

No new matter is added by the amendments made herein.

Obviousness-type Double Patenting Rejection

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 1 of U.S. Patent No. 5,879,679 ("’679 patent"). The Examiner asserts that claim 1 of the present application and claim 1 of the ’679 patent are not patentably distinct from each other because they both are directed to an antigen-based heteropolymer comprising a monoclonal antibody specific for binding to complement receptor site on a primate erythrocyte, and wherein said monoclonal antibody is crosslinked to an antigen specific for either a target pathogenic antibody or an autoantibody.

In response, while not admitting that the claim 1 of the above-identified patent application is not patentably distinct from claim 1 of the ’679 patent, Applicants submit herewith a Terminal Disclaimer under 37 C.F.R. § 1.321(b) by the assignee of the above-identified application (1) disclaiming any part of any patent granted on the present application which could extend beyond the expiration date of the ’679 patent; and (2) ensuring that any such patent granted on the present application shall be enforceable only for and during such period that such patent is commonly owned with the ’679 patent.

By this terminal disclaimer, and as stated therein, the assignees do not disclaim any terminal part of any patent granted on the present application prior to the expiration date of the full statutory term of the ’679 patent, as presently shortened by any Terminal Disclaimer, in the event that the ’679 patent later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination certificate, or is otherwise terminated prior to the

expiration of its statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

Applicants submit that the submission of the Terminal Disclaimer obviates the rejection, and respectfully requests its withdrawal.

CONCLUSION

Applicants respectfully request that the above-made amendments and remarks of the present response be entered and made of record in the file history present application. Applicants submit that the presently pending claims meet all requirements for patentability and respectfully request allowance and action for issuance.

Applicants request that the Examiner call the undersigned at (212) 326-3921 if any questions or issues remain.

Respectfully submitted,

Date: December 23, 2004

Margaret B. Brivanlou 40,922
Margaret B. Brivanlou (Reg. No.)

By: William J. Thomann 40,203
William J. Thomann (Reg. No.)

JONES DAY
222 East 41st Street
New York, New York 10017-6702
(212) 326-3939